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ORIGINAL

No. 96-8422

U.S. SUPREME COURT

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

SILLASSE BRYAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTIONS PRESENTED

1. Whether a conviction under 18 U.S.C. 924(a)(1)(D) for willfully violating 18 U.S.C. 922(a)(1)(A), which prohibits dealing in firearms without a federal license, requires the jury to find that the offender knew of the federal licensing requirement and nonetheless sold firearms without a license.
2. Whether the district court erred when it refused to give petitioner's proposed jury charges on the credibility of accomplice-witnesses.
3. Whether the district court erred by charging the jury that it could convict petitioner of conspiracy if the jury unanimously found an overt act other than the acts charged in the indictment.

(I)

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A4) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on February 10, 1997. Pet. App. A1. The petition for a writ of certiorari was filed on March 31, 1997. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Eastern District of New York, petitioner was convicted on one count of conspiracy to deal in firearms without a license, in

violation of 18 U.S.C. 371, and one count of unlawful dealing in firearms without a license, in violation of 18 U.S.C.

922(a)(1)(A) and 924(a)(1)(D). He was sentenced to 57 months' imprisonment, to be followed by three years' supervised release. The court of appeals affirmed. Pet. App. A1-A4.

1. Between December 1992 and August 1993, petitioner, with the aid of two accomplices, purchased 14 firearms in gun stores in Columbus, Ohio, and then resold them in Brooklyn, New York, without having the required federal license for firearms dealers. Gov't C.A. Br. 2. Petitioner admitted to one of his accomplices that he could not buy guns in New York, where he lived, because he did not have a license. Ibid.; Tr. 30. Petitioner assured the other accomplice that she would not get into trouble for assisting petitioner in purchasing the firearms because he intended to make the guns untraceable by removing the serial numbers. Gov't C.A. Br. 3. Petitioner confessed, after his arrest, that he used accomplices in Ohio to purchase the firearms there, that he and his accomplices transported the guns to New York, and that he sold the guns for \$500 each in his Brooklyn neighborhood. Ibid. Records from the Department of the Treasury confirmed that petitioner never possessed a federal license to deal in firearms. Id. at 4.

2. Petitioner was charged with violating 18 U.S.C. 922(a)(1)(A), which prohibits anyone other than a licensed dealer from dealing in firearms. Under 18 U.S.C. 924(a)(1)(D), anyone who "willfully" violates Section 922(a)(1)(A) (among other

provisions) is subject to a fine and imprisonment.

Petitioner requested the trial court to instruct the jury that, to find petitioner guilty, it was required to find that he knew of the license requirement and engaged in his conduct notwithstanding the known need for such a license. Pet. 5. The trial court refused to give that instruction. Instead, the trial court defined the term "willfully" for the jury as follows:

A person acts willfully if he acts intentionally and purposely and with the intent to do something the law forbids, that is, with the bad purpose to disobey or to disregard the law. Now, the person need not be aware of the specific law or rule that his conduct may be violating. But he must act with the intent to do something that the law forbids.

Tr. 345. Further, with specific regard to the offense of unlawful dealing in firearms without a license, the trial court instructed:

In this case, the government is not required to prove that [petitioner] knew that a license was required, nor is the government required to prove that he had knowledge that he was breaking the law. However, the government must prove that [petitioner] acted willfully. In order to satisfy this element, the government must prove that [petitioner] acted knowingly and purposely and that [petitioner] intended to commit an act which the law forbids.

Tr. 350.

Petitioner also requested the court to charge the jury that his accomplices (who testified at trial) were drug abusers and were interested in the outcome of the trial. The court declined to give that instruction. The court did instruct the jury, however, that, "[b]ecause of the very nature of accomplice testimony, \* \* \* it must be scrutinized with great care and viewed with particular caution when you decide how much of that



testimony to believe. You should, for example, ask yourselves whether an accomplice witness would benefit more by lying or by telling the truth." Tr. 341. It further charged that the jury should consider the effect of the accomplices' plea agreements with the government on their credibility. Tr. 341-342.

With respect to the conspiracy charge, the court instructed the jury that the government was required to prove that "at least one overt act was knowingly committed by one of the conspirators at or about the time and place alleged. This overt act need not be one of the four charged in the indictment. But, you all must agree on at least one overt act." Tr. 356-357.

3. In an unpublished summary disposition, the court of appeals affirmed petitioner's convictions. The court first rejected petitioner's contention that the evidence was insufficient to support his conviction for willful dealing in firearms without a license. That argument, stated the court,

rests on a misunderstanding of the law of this circuit. The willfulness element of unlawful sale of firearms does not require proof "that defendant had specific knowledge of the statute he is accused of violating, nor that he had specific intent to violate the statute." See United States v. Ali, 68 F.3d 1468, 1473 (2d Cir. 1995). Rather, this circuit reads the willfulness requirement more "broadly requir[ing] only that the government prove that the defendant's conduct was knowing and purposeful and that the defendant intended to commit an act which the law forbids." United States v. Collins, 957 F.2d 72, 76 (2d Cir. 1992). Thus, while we acknowledge that several of our circuits have construed the law more narrowly, see, e.g., United States v. Sanchez-Corcino, 85 F.3d 549, 553 (11th Cir. 1996) (holding that "in order for the Government to prove the offense of willfully dealing in firearms without a license . . . it must prove that the defendant acted with knowledge of the licensing requirement"), [petitioner's] argument for such a

construction of the law of this circuit is foreclosed.<sup>1</sup>

Pet. App. A2. Applying that standard, the court found the evidence sufficient to support the conviction. The court noted that petitioner had made several trips to Ohio for the purpose of purchasing guns that he could not obtain legally in New York; that petitioner enlisted two Ohio women to help him purchase guns there, knowing that in Ohio an in-state driver's license was sufficient for a gun purchase; that petitioner confessed to purchasing the guns in Ohio with the intention to transport them to New York; and that petitioner removed the serial numbers from the firearms in order to avoid detection. Pet. App. A3.

Petitioner also challenged the trial court's refusal to give his proposed accomplice-witness instruction as well as the credibility instruction actually given by the court. The court of appeals reviewed his challenge only for plain error, noting

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<sup>1</sup> In United States v. Collins, 957 F.2d 72, cert. denied, 504 U.S. 944 (1992), the Second Circuit rejected the defendant's contention that the element of willfulness in cases like this one requires proof that the defendant knew specifically of the federal licensing requirement and intended to disobey that requirement. See id. at 76. Instead, the Collins court held, the element of willfulness requires "only that the government prove that the defendant's conduct was knowing and that the defendant intended to commit an act which the law forbids." Ibid. The court of appeals then held that the district court's failure to instruct on willfulness in that case was harmless error because, inter alia, "evidence that Collins repeatedly obliterated serial numbers from the guns he sold and wiped fingerprints off guns when he sold them, demonstrates that Collins understood that his firearms sales violated the law." Id. at 77. In United States v. Ali, 68 F.3d 1468, 1472 (1995), the Second Circuit held that the government "need not establish that the defendant had specific knowledge of the statute he is accused of violating, nor that he had the specific intent to violate the statute."

that petitioner had not objected to the credibility charge given by the district court. Pet. App. A3. The court found no error, for it concluded that the charge proposed by petitioner was not accurate; that proposed charge asserted that both accomplice witnesses were abusing drugs during the critical time period, but "there was contradictory evidence on the matter with respect to one of the witnesses at issue." Ibid. The court of appeals also observed that "the district court took care to instruct the jury of the dangers inherent in accomplice testimony and of the need to give the two witnesses' testimony special attention because both had entered into cooperation agreements with the government." Id. at A3-A4.

Finally, the court found no error in the trial court's charge that the jury could find petitioner guilty of conspiracy if it unanimously found that one of the conspirators had committed an overt act in furtherance of the conspiracy, even if that overt act was not one of the acts pleaded in the indictment. Pet. App. A4. Relying on circuit precedent, the court held that "a conspiracy conviction may rest on an overt act not charged in the indictment." Ibid.

#### DISCUSSION

1. Petitioner contends (Pet. 7-9) that the jury was improperly instructed on the standard for establishing a willful violation of the firearms licensing provision at issue in this case, 18 U.S.C. 922(a)(1)(A), and that the circuits are divided on the proper construction of the element of willfulness set

forth in 18 U.S.C. 924(a)(1)(D). Petitioner argues that the trial court should have charged the jury that, to find petitioner guilty, it was required to find that he was aware of the requirement of a federal firearms dealer's license but nonetheless dispensed firearms without a license. In our view, the instructions in this case adequately conveyed to the jury the correct requirements for establishing willfulness under Section 924(a)(1)(D). We agree with petitioner, however, that the courts of appeals are divided as to the construction of the element of willfulness in cases like this one. Because the question is important to the administration of federal firearms regulation, this Court's review is warranted.

a. Section 922(a)(1)(A) prohibits anyone other than a federally licensed firearms dealer from dealing in firearms. The element of scienter for a criminal violation of that provision is supplied by 18 U.S.C. 924(a)(1), which punishes, and sets out penalties for, a variety of firearms offenses. Section 924(a)(1) provides, in pertinent part:

Except as otherwise provided \* \* \* , whoever

(A) knowingly makes any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter or in applying for any license or exemption or relief from disability under the provisions of this chapter;

(B) knowingly violates subsection (a)(4), (f), (k), (r), (v), or (w) of section 922;

(C) knowingly imports or brings into the United States or any possession thereof any firearms or ammunition in violation of section 922(1); or



(D) willfully violates any other provision of this chapter,

shall be fined under this title, imprisoned not more than five years, or both.

(Emphasis added.) Petitioner's offense falls under Section 924(a)(1)(D). Accordingly, the government was required to prove beyond a reasonable doubt that petitioner acted "willfully."

The proper interpretation of the willfulness requirement in Section 924(a)(1)(D) should be informed by three principles of statutory construction. First, the word "willfully" is a "word of many meanings, its construction often being influenced by its context." Spies v. United States, 317 U.S. 492, 497 (1943).

Thus, to determine the precise mental state under the willfulness requirement here, it is necessary to examine the statutory context surrounding Section 924(a)(1)(D). Second, because Congress provided that certain firearms offenses warrant criminal punishment if committed "knowingly" but specified that other offenses may be punished only if committed "willfully," there is a presumption that Congress intended the concept of willfulness to require a different showing than that of mere knowledge. See Russello v. United States, 464 U.S. 16, 23 (1983). Third, there is a "venerable principle that ignorance of the law generally is no defense to a criminal charge," which is overcome only in special circumstances. Ratzlaf v. United States, 510 U.S. 135, 149 (1994); Cheek v. United States, 498 U.S. 192, 199 (1991).

Against that background, an examination of the statutory context indicates that a "willful[]" violation under Section

924(a)(1)(D) requires proof that the defendant was generally aware or believed that his conduct was illegal and engaged in it despite that awareness or belief, but does not require proof that the defendant knew of any particular statutory requirement or knew that his conduct violated that law. That construction supplies the words "willfully violated" with a meaning different from that of mere knowledge and protects a defendant from conviction based on an inadvertent violation of the law, but does not require the government to make the unusual and heightened mens rea showing that the defendant had specific knowledge of provisions of federal law.

At the outset, it is established that, to show that the defendant acted "knowingly" under Section 924(a), the government is not required to show that the defendant knew his conduct was unlawful, but must show only that the defendant knew he was engaging in the prohibited conduct. See United States v. Sherbondy, 865 F.2d 996, 1002 (9th Cir. 1988) ("Congress chose the word 'knowingly' precisely because it did not want knowledge of the law to be an element of the offenses."); see also United States v. Langley, 62 F.3d 602 (4th Cir. 1995) (en banc), cert. denied, 116 S. Ct. 797 (1996); United States v. Elias, 937 F.2d 1514, 1518 (10th Cir. 1991); United States v. Dancy, 861 F.2d 77, 80-82 (5th Cir. 1988). That conclusion is appropriate in light of the inherently serious nature of the violations covered by the "knowingly" requirement, such as making false statements (Section 924(a)(1)(A)); possessing dangerous devices such as

machine guns and semiautomatic assault weapons, or transporting firearms with obliterated serial numbers (Section 924(a)(1)(B)); or importing firearms or ammunition (Section 924(a)(1)(C)). Given that construction of "knowingly," it is reasonable to conclude that the element of willfulness under Section 924(a)(1)(D) requires something more than the defendant's knowledge of his actions.

Such an inference is confirmed by the nature of the offenses covered by Section 924(a)(1)(D) (including the one in this case). The covered offenses involve, for example, the unlicensed manufacture, transportation, and dealing of firearms. Those offenses are not necessarily mala in se; rather, they generally concern matters that have been brought within the criminal law to enforce a federal regulatory scheme. While the offenses covered by "knowingly" and "willfully" in Section 924(a) may not divide into two different categories with complete clarity, it is nonetheless reasonable to infer that Congress imposed a willfulness requirement under Section 924(a)(1)(D) to protect against criminal punishment for inadvertent violations of regulatory provisions, while imposing a mere knowledge requirement for more self-evidently serious violations.

Nonetheless, there is nothing in the context or structure of Section 924(a) that suggests that Congress intended to impose on prosecutions under Section 924(a)(1)(D) the highest scienter requirement known to the criminal law -- specific knowledge of the particular legal requirements violated. Such a heightened

requirement would unnecessarily depart from the settled maxim that ignorance of the law is not a defense. Cheek, 498 U.S. at 199. Rather, to show a willful violation in cases like this one, it is sufficient that the government prove that the defendant was aware or believed that his conduct was illegal and acted with a purpose to violate the law, even if he lacked knowledge of the particular requirements of the law that he was violating.

The jury instructions in this case adequately expressed that understanding of willfulness.<sup>2</sup> "[C]onsidered in the context of the instructions as a whole and the trial record," Estelle v. McGuire, 502 U.S. 62, 72 (1991) (internal quotation marks omitted); United States v. Pipola, 83 F.2d 556, 563 (2d Cir. 1996), the jury instructions explained that a conviction under Section 924(a)(1)(D) required proof that petitioner acted with a purpose to violate the law, but that it was unnecessary for the jury to find that he knew the specific requirements of the federal licensing regime that he had violated. In general instructions, the trial court defined "willfully" to the jury as requiring "the intent to do something the law forbids, that is, with the bad purpose to disobey or to disregard the law." See Tr. 345. At the same time, the court made clear that actual knowledge of any particular legal requirement was not a prerequisite for conviction. Ibid. In further charging the jury on the particular offense in this case, the court, after

<sup>2</sup> The relevant jury instructions on willfulness are set forth in an appendix to this brief. See App., infra.



explaining that knowledge of illegality was not required, again defined "willfully," stating that to satisfy that element, the government was required to prove that petitioner "acted knowingly and purposely and \* \* \* intended to commit an act which the law forbids." Tr. 350. Although the last clause is somewhat ambiguous, the instructions as a whole fairly communicated that the jury was required to find not just that petitioner knowingly committed the acts that amount to a violation of the law, but also that he committed them with a purpose to violate the law.

The evidence in this case was sufficient to meet that standard. The court of appeals, after reviewing the evidence, noted that petitioner engaged in conduct that demonstrated his awareness of the illegality of his actions -- such as his traveling to Ohio for the purpose of obtaining firearms that he could not obtain legally in New York, his use of accomplices residing in Ohio to buy firearms there, and "most important," his removal of the serial numbers of the firearms that he purchased in Ohio. Pet. App. A3. That evidence sufficed to establish that petitioner was at least generally aware that his conduct was illegal, and purposely engaged in such conduct.

b. Although the instructions in this case were sufficient to communicate a correct understanding of willfulness, we agree with petitioner that the courts of appeals are divided on the proper interpretation of willfulness under Section 924(a)(1)(D). The Eleventh Circuit in United States v. Sanchez-Corcino, 85 F.3d 549, 553 (11th Cir. 1996), has held that it is necessary for the

government to prove that the defendant "acted with knowledge of the licensing requirement." The court specifically stated that "[k]nowledge of the general illegality of one's conduct is not the same as knowledge that one is violating a specific rule -- here, the prohibition against unlicensed dealing in firearms." Id. at 554. Furthermore, as the court of appeals in this case recognized (Pet. App. A2), the instruction given here would have been found insufficient by the Eleventh Circuit under Sanchez-Corcino. See 85 F.3d at 554 (finding jury instruction insufficient when it permitted conviction without the jury "ever having concluded that [the defendant] knew of the licensing requirement"). Two other courts of appeals have also required the government to establish that the defendant knew that his conduct was unlawful to satisfy the willfulness requirement under Section 924(a)(1)(D). United States v. Hayden, 64 F.3d 126, 130 (3d Cir. 1995); United States v. Obiechie, 38 F.3d 309, 315 (7th Cir. 1994); see also United States v. Hern, 926 F.2d 764, 767 & n.6 (8th Cir. 1991). Although those courts have been less specific than the Eleventh Circuit in articulating the proper jury instruction to explain the concept of willfulness to the jury, they, along with the Eleventh Circuit, have expressly disagreed with the governing Second Circuit precedent applied by the court of appeals in this case, United States v. Collins, 957 F.2d 72, cert. denied, 504 U.S. 944 (1992). See Pet. App. A2 (relying on Collins); cf. Sanchez-Corcino, 85 F.3d at 553 n.1 (disagreeing with Collins); Hayden, 64 F.3d at 130 n.6 (same);



Obiechie, 38 F.3d at 315 (same).

The conflict on the element of willfulness at issue in this case warrants resolution by this Court. Prosecutions for unlicensed dealing in firearms arise with some regularity, and the proper definition of the scienter standard is often an important issue. While in some cases it may be possible for the government to satisfy the stringent scienter requirements imposed by the Eleventh Circuit (and possibly by the Third and Seventh Circuits as well), in other cases, proving specific knowledge of federal licensing requirements is quite difficult. Clandestine firearms dealers may not acquaint themselves with the specific requirements of federal law that they are violating, or even know whether it is federal, state, or local law they are violating, yet such dealers may purposefully act with awareness that their surreptitious sales are unlawful. Application of Section 924(a)(1)(D) in such circumstances is hampered if the government must shoulder the burden of showing specific knowledge of the requirements of the United States Code as a prerequisite to conviction. Alternatively, if such a showing is required by federal law, there is no reason why defendants in the Second Circuit should be convicted without it. Accordingly, review by this Court is warranted.

2. Petitioner also argues (Pet. 11-12) that the trial court erred when it refused to instruct the jury that his accomplices' credibility warranted particularly careful scrutiny by the jurors because they used drugs, and that the accomplices

were interested witnesses as a matter of law. Those contentions are without merit. As the court of appeals noted, the proposed drug-abuse instruction was properly rejected because the instruction was not accurate; there was contradictory evidence about the drug use of at least one of the accomplices. Pet. App. A3; see United States v. Lam Lek Chong, 544 F.2d 58, 68 (2d Cir. 1976) (noting that a requested instruction "must be accurate in every respect before a trial judge is held in error for refusing it"), cert. denied, 429 U.S. 1101 (1977).

As for the requested instruction on the accomplices' interest in the outcome of the case, "no absolute and mandatory duty is imposed upon the trial court to advise the jury by instruction that they should consider the testimony of an uncorroborated accomplice with caution." United States v. Schoenfeld, 867 F.2d 1059, 1062 (8th Cir. 1989) (per curiam). Moreover, the court charged the jury to evaluate the accomplices' testimony with care. See pp. 3-4, supra; Tr. 341. And after describing the cooperation agreements between the accomplices and the government, the court also instructed that "witnesses who testify pursuant to such agreements have an interest in this case different from an ordinary witness. This is why you must carefully scrutinize whether the testimony of such a witness was made up in any way because the witness believed or hoped that he or she would receive favorable treatment by testifying falsely." Tr. 342. Those instructions alerted the jury that it should evaluate the accomplices' testimony very carefully and should

assess all of the possible reasons why that testimony might be more or less reliable.

3. Finally, petitioner argues (Pet. 9-11) that the trial court erred in instructing the jury that the overt-act requirement for the conspiracy charge could be met if the jury unanimously agreed that one of the conspirators committed an overt act in furtherance of and during the conspiracy, even if that act was not one of the overt acts alleged in the indictment. There was no error in that charge. It is well established that, "in conspiracy cases, the government is not limited in its proof to establishing the overt acts specified in the indictment." United States v. Lewis, 759 F.2d 1316, 1344 (8th Cir. 1984), cert. denied, 474 U.S. 994 (1985); see also United States v. Perez, 489 F.2d 51, 70 (5th Cir. 1973), cert. denied, 417 U.S. 945 (1974); United States v. Negro, 164 F.2d 168, 173 (2d Cir. 1947); Marcus v. United States, 20 F.2d 454, 456 (3d Cir.), cert. denied, 275 U.S. 565 (1927).<sup>3</sup> As long as the defendant has knowledge that overt acts other than those alleged in the indictment may be proven at trial, his substantial rights are not prejudiced if the jury finds that he was guilty of conspiracy

<sup>3</sup> The Ninth Circuit appears to have once adhered to a different view, see Fredericks v. United States, 292 F. 856 (1923), but it has not addressed the question recently, and it may have receded from its earlier position, see Marino v. United States, 91 F.2d 691, 694-695 (9th Cir. 1937) (noting that the overt act "is something apart from the conspiracy"), cert. denied, 302 U.S. 764 (1938). The Ninth Circuit has also stated that "[t]he government need not set out with precision every overt act committed," and that minor variances between the overt acts pled and those proven will rarely be fatal. See United States v. Bolzer, 556 F.2d 948, 950 (1977).

based on an overt act that was proven but not alleged. See United States v. Elliott, 571 F.2d 880, 911 (5th Cir.), cert. denied, 439 U.S. 953 (1978).

Petitioner's reliance (Pet. 10) on United States v. Sacco, 436 F.2d 780, 783 (2d Cir. 1971), is misplaced. Sacco stands only for the proposition that the overt act must have occurred during the duration of the conspiracy. Although the court there upheld a jury instruction that the jury must find that "one of the overt acts alleged was committed by at least one of the defendants," ibid., the court was not addressing the question whether the jury may find a defendant guilty of conspiracy if it finds that the conspirators committed an overt act other than the ones pled in the indictment. The Second Circuit has expressly held that a conviction for conspiracy may be valid even when the overt act proven at trial is not one of those alleged in the indictment. See Negro, 164 F.2d at 173; see also United States v. Armone, 363 F.2d 385, 400 (2d Cir.), cert. denied, 385 U.S. 957 (1966).<sup>4</sup>

<sup>4</sup> Although, as petitioner points out (Pet. 10-11), Armone was a prosecution for a narcotics conspiracy, in which proof of an overt act has since been held not to be required, see United States v. Shabani, 513 U.S. 10 (1994), the Armone court analyzed the case on the assumption that proof of an overt act was necessary to a conviction.



## CONCLUSION

The petition for a writ of certiorari should be granted, limited to the question whether a willful violation of 18 U.S.C. 922(a)(1)(A) and 924(a)(1)(D) requires the jury to find that the defendant knew that dealing in firearms requires a license but nonetheless engaged in unlawful firearms dealing. In all other respects, the petition should be denied.

Respectfully submitted.

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JULY 1997

**APPENDIX**

## JURY INSTRUCTIONS

[344] Because of the number of charges in the indictment, and because certain legal requirements pertain to more than one charge, I think it might be useful for me to state certain of these requirements in some detail at the outset and not to have to repeat them with respect to each of the charged counts.

As a general rule, the law holds persons accountable only for conduct they intentionally engage in. Thus, in describing the various crimes charged to you, I will on occasion explain that, before you can find the defendant [345] guilty, you must be satisfied that the defendant was acting knowingly and intentionally. Let me explain what is meant by these terms under the law.

A person acts knowingly if he acts purposely and voluntarily and not because of a mistake, accident, or other innocent reason. A person acts intentionally if he acts deliberately and with the specific intent to do something the law forbids. Now, the person need not be aware of the specific law or rule that his conduct may be violating. But, he must act with the specific intent to do whatever it is the law forbids. A person acts willfully if he acts intentionally and purposely and with the intent to do something the law forbids, that is, with the bad purpose to disobey or to disregard the law. Now, the person need not be aware of the specific law or rule that his conduct may be violating. But he must act with the intent to do something that the law forbids.

\* \* \* \* \*

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[347] Now, the substantive charge in this indictment is contained in Count 2. The indictment reads:

On or about and between December 28, 1992, and August 31, 1993, within the Eastern District of New York and elsewhere, the defendant Sillasse Bryan, also known as Uzi, not being a licensed importer, licensed manufacturer, or licensed dealer of firearms, did knowingly and willfully engage in the business of dealing in firearms. 18 U.S.C. Section 922(a)(1)(A), 924(a)(1)(D), 2, and 3551.

Section 922(a)(1)(A) of Title 18 of the United States Code states in pertinent part that: It shall be unlawful for [348] any person, except a licensed importer, licensed manufacturer, or licensed dealer to engage in the business of dealing in firearms.

In order to sustain its burden of proof in this charge, the government must prove beyond a reasonable doubt the following two elements:

First, that on or about the dates set forth in the indictment the defendant knowingly and willfully engaged in the business of dealing in firearms, and second, that the defendant did not have a license as an importer, manufacturer or dealer in firearms.

\* \* \* \* \*

[350] In this case, the government is not required to prove that the defendant knew that a license was required, nor is the government required to prove that he had knowledge that he was breaking the law. However, the government must prove that the defendant acted willfully. In order to satisfy this element, the



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government must prove that the defendant acted knowingly and purposely and that the defendant intended to commit an act which the law forbids.